



# INDEPENDENT CONTRACTORS

The Montana Teachers' Retirement System (TRS) staff has created this handout in order to clarify information on the status of Independent Contractors who are working in positions reportable to TRS.

## Independent Contractors Who Are TRS Retirees

In general, if you are:

1. a TRS retiree *and*
2. you are working in a position reportable to TRS as an independent contractor

you are required to be reported to TRS by your employer; all of the *time* you work and all of the *compensation* you receive from the TRS employer must be reported to TRS, regardless of when you retired. (19-20-731(4), MCA)

Your *actual status* as an independent contractor *is not relevant* **if you are a TRS retiree**; this is true whether or not a full analysis applying the IRS's factors would establish that you are an independent contractor.

TRS will accept the representation of you and your employer that you are an independent contractor; however, the only issue in this situation is whether you are *performing job duties and functions* that would make you eligible to participate in TRS if you were not identified as an independent contractor.

Your employer must report, as compensation, ***all amounts*** paid to you by the employer related to your service as an independent contractor.

- **Note:** The usual exceptions from working retiree compensation for health insurance premiums, housing, travel expenses, de minimis fringe benefits, and payroll taxes if paid on behalf of an employee by an employer (19-20-731(1)(b)) *do not apply to independent contractors* since the TRS employer paying the amounts is not the actual employer of an independent contractor.

### Earnings Limitations

If you retired with an effective date of retirement on or after August 1, 2011, all amounts reported as compensation to you as an independent contractor will be counted against your earnings limitation.

If you exceed your earning limitation in a fiscal year, your retirement benefit will be suspended until you terminate your service as an independent contractor and apply to reinstate your retirement benefit.

- **Note:** As an independent contractor, you will not be returned to active member status with TRS, and will not earn additional creditable service with TRS based on your service as an independent contractor.

## Independent Contractors Who are *Not* TRS Retirees

In general, an independent contractor is not eligible to participate in TRS.

If you are not a TRS retiree and you are working in a position reportable to TRS as an independent contractor, your employer has the obligation to establish that you are actually an independent contractor rather than an employee.

While TRS may accept an independent contractor exemption certificate as evidence of independent contractor status, TRS may also require a full analysis by applying IRS factors to determine whether a position reportable to TRS is actually being filled by an independent contractor.

Unless and until your employer establishes that you are actually an independent contractor, TRS will assume that you are an employee of that employer and you must be reported to TRS by that employer. (*Rule 2.44.308, Administrative Rules of Montana*)

## Issues to Consider

If you intend to work as an independent contractor as a TRS retiree, it is important for you to understand the following requirements:

1. You must terminate all employment in all positions reportable to TRS and receive your first benefit payment to be considered a retired member.
2. You must complete the required 150 calendar day break in service.

Both these requirements apply to performing *any* job duties or functions that would be reportable to TRS and performed on behalf of a TRS employer. This includes work as an independent contractor by a TRS retiree.

If you continue to work — or return to work — in a TRS reportable position before you have attained retirement member status or before you have fulfilled the 150 calendar day break in service requirement, you will be returned to active member status retroactive to your date of retirement. In addition you will be required to repay all retirement benefits that were paid to you, with interest.

If you have any questions at all regarding whether or not you can work as an independent contractor, we recommend you contact TRS for clarification.

## TRS Contact Information

If you have any questions regarding the information presented here, please contact TRS

<i>Call</i>	(866) 600-4045   (406) 444-3134
<i>Write</i>	PO Box 200139, Helena MT 59620-0139
<i>Fax</i>	(406) 444-2641
<i>Email</i>	trswebadmin@mt.gov
<i>Website</i>	trs.mt.gov